HON'BLE SMT JUSTICE ANIS

CIVIL MISCELLANEOUS APPEAL No.4407 of 2004

J U D G M E N T:

This appeal is filed by the appellants/petitioners under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), aggrieved by the award dated 22.03.2002, passed by the Chairman, Motor Vehicle Accident Claims Tribunal-cum-

Principal District Judge, Nalgonda, in O.P.No.5 of 1999, awarding compensation of Rs.1,25,800/-.

2. The appellants/petitioners filed the above O.P under Sections 166 of the Act, claiming compensation of Rs.3,00,000/- on account of the death of Gugloth Teja (hereinafter referred to as 'the deceased') in a motor vehicle accident, that occurred on 05.05.1997.

3. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Original Petition.

4. The brief averments made in the petition are that on 05.05.1997, when the deceased was going on his scooter, the driver of the APSRTC bus bearing No.AP.10Z.741, drove it in a rash and negligent manner and dashed against the deceased. Due to the said accident, the deceased died, leaving behind the petitioners. The deceased was doing agriculture, having cattle business and earning Rs.4,000/- p.m at the time of accident. The first petitioner being the wife, petitioners 2 to 5 being the children and petitioners 6 & 7 being the parents of the deceased claimed compensation against the respondent.

5. The brief averments made in the counter filed by the respondent are as follows:

The respondent put the petitioners to prove the manner of accident, age and income of the deceased and stated that the compensation claimed by the petitioners is excessive and untenable and prayed the Court to dismiss the petition with costs.

6. Basing on the above pleadings, the Tribunal framed three issues and to substantiate the claim, the petitioners got examined PWs.1 & 2 and Exs.A1 to A6 got marked on their behalf. On behalf of the respondent, no oral or documentary evidence was adduced.

7. After considering the oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the

APSRTC bus bearing No.AP.10Z.741 and awarded compensation of Rs.1,25,800/- to the petitioners along with interest at 9% p.a against the respondent.

8. Being not satisfied by the award passed by the Tribunal, the petitioners preferred the present appeal.

9. The learned counsel appearing for the appellants/ petitioners argued that the petitioners are the dependants on the income of the deceased, who earns by doing agriculture; that the deceased has to maintain the entire family and the Tribunal grossly erred in assessing the income of the deceased as Rs.900/- p.m; that the deceased was earning Rs.4,000/- p.m at the time of his death and without any basis, the Tribunal fixed the age as 37 years, whereas the actual age of the deceased at the time of his death is 34 years and prayed the Court to fix the income of the deceased as Rs.4,000/- p.m with relevant multiplier in view of the decision reported in ***Sarla Verma and others V. Delhi Transport Corporation and another***, and prayed the Court to enhance the compensation.

10. On the other hand, the learned counsel appearing for the respondent argued that after considering the oral evidence on record, the Tribunal rightly awarded the compensation and the said compensation is just and reasonable and the findings of the Tribunal needs no interference and prayed the Court to dismiss the appeal.

11. Having regard to the submissions made by the learned counsel appearing for both parties, the points which are to be decided in this appeal are as follows:

1. Whether the appellants are entitled for enhancement of compensation as prayed for or not?
2. Whether the Tribunal has granted just and reasonable compensation to the appellants or not?

12. **POINTS 1 & 2:** As per the evidence of PWs.1 & 2 and Exs.A1 & A2, the Tribunal rightly came to the conclusion that the deceased died due to rash and negligent driving of the driver of the APSRTC bus bearing No.AP.10Z.741 and the said findings of the Tribunal needs no interference.

13. As far as the quantum of compensation awarded to the petitioners is concerned, PW.1 who is the wife of the deceased, stated in her evidence that her husband was doing cattle trade and agriculture and earning Rs.4,000/- p.m. Further, she stated that the deceased was aged about 35 years and petitioners 2 to 5 are the children and petitioners 6 & 7 are the parents of the deceased,

and all of them are dependants on the income of the deceased. Except the oral testimony of PW.1, there is no documentary evidence to show that the deceased was having any agricultural property. The Tribunal fixed the income of the deceased as Rs.900/- p.m i.e., Rs.10,800/- p.a and deducted 1/3rd towards personal and living expenses of the deceased. But, in view of the decision reported in ***Sarla Verma's case*** (first cited supra), as the dependants of the deceased are 7, 1/5th of the income has to be deducted towards his personal and living expenses. Therefore, in view of the said principle, if 1/5th of the income is deducted, the contribution of the deceased to his family comes to Rs.8,640/- p.a. The claim of the petitioners is that the age of the deceased is about 34 years. But, the Tribunal after considering the post-mortem report Ex.A5, rightly fixed the age of the deceased as 37 years. As the age of the deceased is 37 years, in view of ***Sarla Verma's case*** (first cited supra), the relevant multiplier applicable to the age group of the deceased is '14'. Thus, if the income of the deceased is multiplied with the relevant multiplier '14', the total loss of dependency comes to Rs.8,640/- X 14 = Rs.1,20,960/-. Further, in view of the latest judgment of the Hon'ble Apex Court in ***Ramilaben Chinubhai Parma & Ors., v. National Insurance Co. & Ors.,,*** the appellants are entitled to Rs.50,000/- as conventional amount. Thus, the in view of the principle laid down in the said judgment, Rs.50,000/- is awarded to the petitioners. Thus, the petitioners are entitled for compensation of Rs.1,70,960/- (Rs.1,20,960/- + Rs.50,000/-].

14. Therefore, in view of the above discussion, the appeal is partly allowed enhancing the compensation awarded by the Tribunal to the petitioners from Rs.1,25,800/- to Rs.1,70,960/-, but reducing the rate of interest from 9% to 7.5% p.a from the date of petition till the date of realisation, payable by the respondent. On deposit of the said amount, the appellants 6 & 7/petitioners 6 & 7 being the parents are entitled for Rs.8,000/- (including the amount awarded earlier) each and are permitted to withdraw the same with interest. The appellant Nos.2 to 5/petitioenrs 2 to 5 being the children of the deceased are entitled for Rs.25,000/- (including the amount awarded earlier) each and their amounts shall be invested in a Nationalised Bank till the attainment of their majority. Further, they are permitted to withdraw the amount of their shares with interest after the attainment of their majority. The appellant No.1/petitioner

No.1 being the wife of the deceased is entitled to the remaining amount of Rs.54,960/- (including the amount awarded earlier) and is permitted to withdraw the amount awarded with interest. No order as to costs.

15. Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

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ANIS, J

Date: 31.10.2014
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